

REMARKS

Claims 1-10 are pending in the above-mentioned application. Claims 1-10 are rejected. Based on Applicant's submission, reconsideration is respectfully requested.

More particularly, the Office Action has:

In item 4, rejected claims 1-3, and 6-10 under 35 U.S.C. 103(a) as being unpatentable over Ginter (U.S. Patent 6,427,140) in view of Nakano (U.S. Patent 5,745,109);

In Item 5, rejected claim 4 under 35 U.S.C. 103(a) as being unpatentable over Ginter in view of Nakano and further in view of Kiesel (U.S. Patent No. 4,949,193); and

In Item 6, rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Ginter in view of Nakano and further in view of Izumi (U.S. Patent No. 6,157,410).

As these rejections appear to be identical to the rejections made in the first office action, Applicant repeats the arguments made in response to the first office action for each of the items. Applicant adds the following remarks.

In the rejection, the Office Action makes the statement that the limitation "to receive seller specific information" is non-functional descriptive material and that the auction environment is merely an intent of use that does not affect the steps of delivering selectable images to a browser. Applicant takes issue with these statements. First, the statement regarding non-functional descriptive material is misapplied. A rejection relating to "non-functional descriptive material" is properly applied to a claim as a whole if the claim is drawn to non-statutory subject matter. See MPEP, 2100-6,7, Rev. 2, May 2004. Applicant submits that there has been no allegation that Applicant's claimed subject matter does not meet 35 U.S.C. 101 and Applicant contends that the claimed invention meets section 101. Therefore, it is a misapplication of this concept to apply it to limitations in a claim so as to ignore such limitations. In fact, the Examiner is reading specific limitations out of the claims, by the misapplication of this concept and this causes the Examiner to cite Ginter and Nakano as prior art.

As Applicant has stated in the previous response, Ginter and Nakano are non-analogous art.¹ Neither reference is in the same field of endeavor as Applicant's invention. Ginter has U.S. Classification 705/80, which is described as Electronic Negotiation in the class of "Data Processing: Financial, Business Practice, Management, Or Cost/Price Determination." Nakano has U.S. Classification 715/838, which is described as "A Thumbnail Or Scaled Image Of A Selectable Iconic Array Of An On-Screen Workspace Or Object," in the class of "Data Processing: Presentation Processing Of Document, Operator Interface Processing, And Screen Saver Display Processing."

Neither reference solves the problem addressed by Applicant's invention. The Ginter reference is concerned with creating a secure environment for the dissemination of electronic information. Ginter, Abstract. This problem is completely unrelated to the problem being solved by Applicant's invention. The Nakano reference is concerned with an improved graphical user interface that enables a user to view and access a large number of icons more intuitively and easily. Nakano, Col. 1, line 30 to Col. 2, line 16. This problem is also unrelated to the problem being solved by Applicant's invention, which is the presentation of seller-related items in an auction environment to attempt to increase sales for that seller. Because it is clear the neither Ginter nor Nakano is valid prior art, the combination cannot be used to construct an obviousness argument.

Futhermore, it appears that the Examiner has engaged in hindsight to select these references, as no person of skill in the art would have sought out these references and combined them without knowledge of Applicant's invention. Such hindsight is impermissible according to the statute which requires that "the subject matter as a whole would have been obvious at the time the invention was made." In re Deminski, at 316.


Because all of the Examiner's rejections apply the impermissible combination of Ginter and Nakano, none of the Examiner's rejections makes a prima facie case of obviousness.

¹ In re Deminski (CA FC) 230 USPQ 313 , 315. "The determination that a reference is from a non-analogous art is therefore two-fold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved."

Applicant, thus respectfully requests an examination using references in the field of art of Applicant's invention or references that relate to the problem the Applicant has solved.

Respectfully Submitted,

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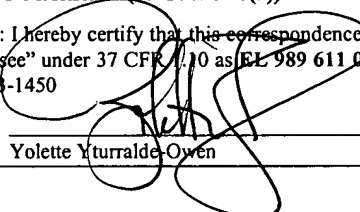
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